

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DANIEL THOMAS BAXTER,

Plaintiff,

Case. No. 17-cv-11960

v.

Honorable Thomas L. Ludington
Mag. Judge Anthony P. Patti

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER DISREGARDING PLAINTIFF’S OBJECTIONS, ADOPTING THE REPORT
AND RECOMMENDATION, DENYING PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT, GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT,
AND AFFIRMING THE DECISION OF THE COMMISSIONER**

Plaintiff Daniel Thomas Baxter applied for Social Security Disability supplemental security income (SSI) alleging a disability onset date of April 30, 2014. He alleges several conditions that limit his ability to work, including right knee “pens,” “fracture of lateral malleolus [open reduction and internal fixation] right ankle.” TR. at 149, ECF No. 9. Plaintiff’s application for SSI benefits was initially denied on July 15, 2014. Plaintiff requested a hearing before an Administrative Law Judge (ALJ). The hearing was held on November 23, 2015. The ALJ issued an original opinion on November 23, 2015, and a revised opinion on May 5, 2016, each of which determined that Plaintiff was not disabled under the Social Security Act. On April 26, 2017, the Appeals Council denied Plaintiff’s request for review. Plaintiff commenced this action on June 20, 2017. ECF No. 1. The case was referred to Magistrate Judge Anthony P. Patti. ECF No. 4. The parties filed cross motions for summary judgment. ECF Nos. 16, 19. Judge Patti issued a report recommending that the Court grant Defendant’s motion for summary judgment,

deny Plaintiff's motion for summary judgment, and affirm the decision of the Commissioner. ECF No. 20.

Pursuant to Federal Rule of Civil Procedure 72, a party may object to and seek review of a Magistrate Judge's report and recommendation. *See* Fed. R. Civ. P. 72(b)(2). As noted in Judge Patti's report and recommendation, however, objections must be filed within 14 days of service of the report and recommendation. Rep. & Rec. at 22, ECF No. 20 (citing Fed. R. Civ. P. 72(b)(2), L.R. 72.1(d)). The report and recommendation was entered on Tuesday, July 24, 2018. Electronic service was effectuate that same day on all parties of record via the CM/ECF system.¹ *Id.* at 23. Plaintiff's objections were therefore due on Tuesday August 7, 2018. The objections were not filed until August 9, 2018. Plaintiff did not seek an extension nor did Plaintiff offer any explanation for the untimely objections. The lack of timely objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that Plaintiff's objections, ECF No. 21, are disregarded as untimely.

It is further **ORDERED** that Judge Patti's report and recommendation, ECF No. 20, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's motion for summary judgment, ECF No. 16, is **DENIED**.

It is further **ORDERED** that Defendant's motion for summary judgment, ECF No. 19, is **GRANTED**.

¹ Federal Rule of Civil Procedure 6(d) provides that, when a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire *if* service is made under Rule 5(b)(2)(C) (mail), (D)(leaving with the clerk) or (F)(other means consented to). As of December 1, 2016, the "3-day rule" no longer applies to service by electronic means, including via CM/ECF. Fed. R. Civ. P. 6(d) advisory committee's note (2016).

It is further **ORDERED** that the Commissioner of Social Security's decision is **AFFIRMED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: September 18, 2018

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 18, 2018.

s/Kelly Winslow
KELLY WINSLOW, Case Manager